

STATE OF WISCONSIN

BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

In the Matter of the Petition of
COLEMAN EDUCATION ASSOCIATION
Involving Certain Employees of
SCHOOL DISTRICT OF COLEMAN

Case IX
No. 31661 ME-2225
Decision No. 21569

Appearances:

Mr. Ron Bacon, Executive Director, United Northeast Educators, 1540 Capitol Drive, Green Bay, Wisconsin 54303, appearing on behalf of the Association.
Mr. Clifford Robbins, Superintendent, School District of Coleman, Coleman, Wisconsin 54112, appearing on behalf of the District.

FINDINGS OF FACT, CONCLUSIONS OF LAW
AND DIRECTION OF ELECTION

Coleman Education Association having, on June 1, 1983, filed a petition with the Wisconsin Employment Relations Commission to clarify an existing voluntarily recognized bargaining unit consisting of all regular certified teachers (including guidance counselors) but excluding substitute teachers, supervisory personnel, Superintendent of Schools and other employees, by determining whether the position of Nurse should be included in said unit; and the matter having been held in abeyance while the parties pursued settlement efforts; and hearing in the matter having been held on February 21, 1984, at Coleman, Wisconsin, before Examiner Jane B. Buffett, a member of the Commission's staff; and a transcript of said proceedings having been prepared and received on February 27, 1984; and both parties having waived the filing of briefs; and the Commission having considered the evidence and positions of the parties and, being fully advised in the premises, makes and issues the following Findings of Fact, Conclusions of Law and Direction of Election.

FINDINGS OF FACT

1. That the School District of Coleman, hereinafter referred to as the District, is a municipal employer maintaining and operating a school district; and that the District maintains its offices in Coleman, Wisconsin.

2. That the Coleman Education Association, hereinafter referred to as the Association, is a labor organization representing employees for the purposes of collective bargaining and maintains its offices at 1540 Capitol Drive, Green Bay, Wisconsin.

3. That since 1970 the Association has been the voluntarily recognized exclusive bargaining representative of all employees in the following unit:

All regular certified teachers (including guidance counselors) but excluding substitute teachers, supervisory personnel, Superintendent of Schools and all other employees. The term "teacher" as used in this agreement shall mean any person, male or female, represented by the bargaining unit. The term "bargaining unit," shall mean all teachers for whom the Coleman Education Association is recognized as exclusive bargaining representative.

4. That the incumbent of the position of Nurse, Carole K. Woulf, has held said position since 1962; that when the Association first sought and received voluntary recognition in 1970, it did not seek to represent the Nurse; that the Association does not currently represent the Nurse; that, since 1970, the Association has not sought to represent, or bargain for, the Nurse; that on

June 1, 1983 the Association filed a unit clarification petition with the Wisconsin Employment Relations Commission requesting that the position of Nurse be included in the existing bargaining unit described in Finding of Fact 3 above; and that in a letter dated March 7, 1984, the Association stated that, if the Commission did not find it appropriate to include the position of Nurse in the bargaining unit described in Finding of Fact 3, the Association desired an election in the residual unit of non-represented professionals.

5. That, in general, the School Nurse provides health services and education to the students; that the Nurse performs general physical exams, height and weight measurements, and screening for vision, hearing, scoliosis, lice and blood pressure; that in appropriate cases the Nurse refers families to physicians and sources of free or low-cost health care and eyeglasses; that the Nurse performs first aid and decides when to refer first aid incidents to a physician; that the Nurse administers medications and provides fluoride treatments and immunizations, that the Nurse gives educational programs on health issues; that the Nurse gives support services to teachers of students with special needs, such as epilepsy and diabetes, and alerts teachers to special illnesses circulating in the school; that the Nurse investigates absenteeism, truancy and child abuse; and that in the aforementioned areas, the Nurse makes required reports to the appropriate state agency.

6. That, at the hearing, the parties stipulated that the position of Nurse was neither managerial nor supervisory, and that the Nurse is the only non-managerial, non-confidential, non-supervisory professional employee who is currently unrepresented; and that the parties further stipulated that the Nurse works the same hours, uses the same facilities, and works with the same students as do the other members of the bargaining unit described in Finding of Fact 3 above.

7. That the Nurse shares a community of interest with the employees in the bargaining unit described in Finding of Fact 3 above.

Upon the basis of the above and foregoing Findings of Fact, the Commission makes and issues the following

CONCLUSIONS OF LAW

1. That the occupant of the position of Nurse is a "municipal employee" within the meaning of Sec. 111.70(1)(b) of the Municipal Employment Relations Act (MERA).

2. That all professional employees in the employ of the School District of Coleman share a community of interest and therefore constitute an appropriate bargaining unit within the meaning of Sec. 111.70(4)(d)2.a. of MERA.

3. That the Wisconsin Employment Relations Commission, in order to carry out the policy of the Municipal Employment Relations Act, will not, in a unit clarification proceeding, include positions in an existing voluntarily recognized unit without a vote, where the parties involved previously had excluded such positions from said unit.

4. That a question concerning representation exists within the residual professional collective bargaining unit referenced in the Direction of Election.

On the basis of the above and foregoing Findings of Fact and Conclusions of Law, the Commission makes the following

DIRECTION OF ELECTION

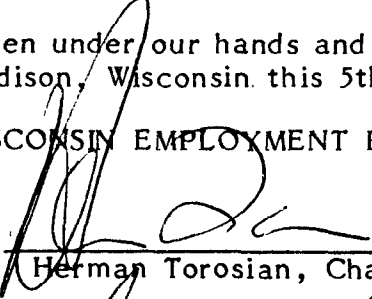
That an election by secret ballot be conducted under the direction of the Wisconsin Employment Relations Commission within forty-five (45) days from the date of this Direction in the residual collective bargaining unit of all professional employees in the employ of School District of Coleman, excluding professional employees in existing bargaining units, managerial, supervisory and confidential employees, who were employed on April 5, 1984, except such employees as may prior to the election quit their employment or be discharged for cause, for the purpose of determining whether a majority of such employees desire to be represented by the Coleman Education Association for the purposes of collective

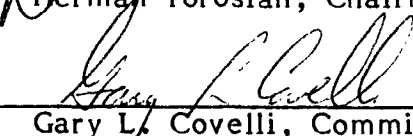
bargaining with the School District of Coleman on questions of wages, hours and conditions of employment, and should said Association be so selected, then the employees in the residual bargaining unit will be included with the balance of the professional employees currently represented by the Association.

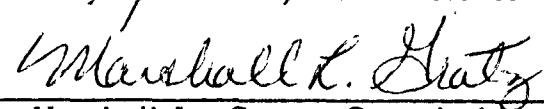
Given under our hands and seal at the City of
Madison, Wisconsin this 5th day of April, 1984.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By


Herman Torosian, Chairman


Gary L. Covelli, Commissioner


Marshall L. Gratz, Commissioner

MEMORANDUM ACCOMPANYING
FINDINGS OF FACT, CONCLUSIONS OF LAW
AND DIRECTION OF ELECTION

The Association initiated this case by petitioning the Wisconsin Employment Relations Commission to clarify the voluntarily recognized bargaining unit to include the position of Nurse.

The Commission regards the scope of voluntarily recognized bargaining units as the result of the parties' bargaining, and therefore will not upset that result by including, without a vote, employees through unit clarification proceedings if the following conditions are present:

1. The positions at issue were in existence at the time of the voluntary recognition.
2. The description of the voluntarily recognized unit implicitly or explicitly excludes the positions at issue.
3. Either the Employer or the Union opposes the proposed expansion.
4. The original exclusion was not based upon statutory grounds.
5. The unit is not repugnant to the provisions of the Municipal Employment Relations Act.
6. There have not been any intervening events which would materially affect the status of the affected employees. 1/

In this case, the position of Nurse has been held by the incumbent, Carole Woulf, since 1962, which is eight years before the voluntary recognition occurred. Although the recognition clause does not explicitly refer to the Nurse, Woulf is not a certified teacher. Moreover, her position was not mentioned at the bargaining table in 1970, and the Association has never bargained the wages, hours, and working conditions for this position. The Association has, by its conduct, thereby affirmed the implicit exclusion of the Nurse. Under these circumstances, the Commission will not undercut the parties' agreement by unconditionally including the Nurse position in the voluntarily recognized bargaining unit.

The appropriate means of adding a pre-existent position to a voluntarily recognized unit, if a community of interest exists, is an election in a residual unit of all non-supervisory, non-managerial professional employees of the District who are not represented by the Association. 2/ In this case, the Nurse is the only employee in such a residual unit. Since the Nurse works with the same students, during the same work hours and in the same facilities as the teachers and guidance counselors in the bargaining unit, she shares a community of interest with the members of the bargaining unit described in Finding of Fact 3 above.

The Association has requested that, if the Commission should determine it will not include the Nurse in the professional bargaining unit through a unit clarification proceeding, it should conduct an election in the residual unit. The

1/ City of Cudahy, 12997 (9/74); Manitowoc County, 18351-A (3/83).

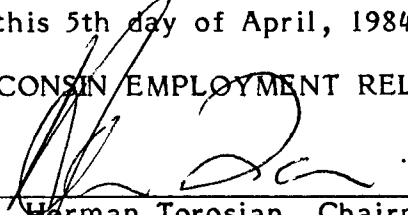
2/ Cochrane-Fountain City Community Jt. School District No. 1, 13700 (6/75).

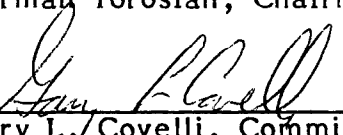
Commission is hereby directing an election in the residual unit, and if the Nurse votes to be represented by the Association, the residual unit she comprises shall be merged with the bargaining unit described in Finding of Fact 3 above. However, the terms and conditions of the existing collective bargaining agreement shall not apply to the Nurse unless collective bargaining produces such a result. 3/

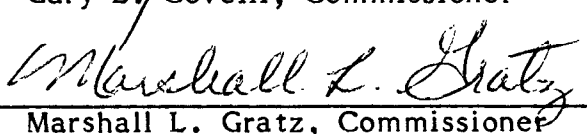
Dated at Madison, Wisconsin this 5th day of April, 1984.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

By


Herman Torosian, Chairman


Gary L. Covelli, Commissioner


Marshall L. Gratz, Commissioner

3/ Ibid.